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| 09/400,281      | 09/21/1999  | TORU TATEISHI        | 04284.0815          | 3269             |

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EXAMINER

BLOUNT, STEVEN

ART UNIT PAPER NUMBER

2661

DATE MAILED: 06/04/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/400,281

Inventor(s)

Tateishi

Examiner

Blount

Group Art Unit

2661

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

## Status

- ☒ Responsive to communication(s) filed on 2/18/03
- ☒ This action is FINAL.
- ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- ☒ Claim(s) 1-6, 11-27 is/are pending in the application.
- Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 1-6, 11-27 is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
  - ☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been received.
  - ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_
  - ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

\*Certified copies not received: \_\_\_\_\_

## Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_
- ☒ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other \_\_\_\_\_

Office Action Summary

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### **DETAILED ACTION**

1. On page 6, it is requested to replace the abstract with a new abstract which is stated to be on the following page. However, the following page (page 7) is for some reason missing.

Applicant is requested to provide (or reprovide) the missing page.

#### ***Claim Rejections - 35 U.S.C. § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1 - 6 and 11 - 27 are rejected under 35 U.S.C. 103(a) as being obvious over U.S. patent 5,392,284 to Sugiyama.

With regard to claim 1, Sugiyama teaches a communication apparatus (the apparatus shown in figure 1) comprising a notifying unit and detecting unit that allows the interchange of communication between members A and B as discussed in column 8, lines 15+ and shown in figure 4. Negotiation between the communication apparatus and a relay station is discussed in column 7 lines 55+ where it is discussed that the transfer rate ability is exchanged, and it is stated that "the scope of ability of compatible between the own terminal ability and the partner's terminal ability is stored in a RAM of the system control unit 16, together with the partner's terminal ability" and it is further stated in column 12, lines 50 - 56, that the "communication

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capable ability is determined from the partner's terminal ability and its own terminal ability, based on a result of the ability exchange from the multiplex/separation unit 17, and stored together with the partner's terminal ability in RAM (step S406)". See also col 8, lines 8+. The number of channels being sent is either explicitly or implicitly mentioned in at least col 6 lines 53+, col 7 lines 15+, col 9 lines 5+, and col 11 lines 50+. It is noted that in col 7, lines 58+, it is stated "such as a transfer rate ability". See this in conjunction with the table above it. While Sugiyama does not explicitly teach the selecting unit to select the communication rate based on the notifying number of usable channels *and* the detected number of usable channels, the relationship between the number of channels and rate is very well known and taught in col 2 lines 18+ and col 6 lines 55+ and the table and col 11 lines 40 - 55, such that it would have been obvious to one of ordinary skill in the art at the time of the invention to have selected the communication rate based on both the notifying number of usable channels *and* the detected number of usable channels.

With regard to claims 2 - 3, the relationship between the data rate and number of channels discussed above would render selecting the communication rate based on either the detected or notified number obvious. With regard to claims 4 and 5 (Cl 4 and Cl 5), the information being sent in figure 4 is control information. Cl 6: note the rejection of claim 1, and note that in figure 1, the system control unit 16 is connected to handset 1 and data terminal 13. Claims 11 - 14: see the rejections immediately above (2 - 5). Claims 15 - 17: as noted above, figure 4 shows terminals A and B communicating transfer rate ability, and the use of a negotiating member is

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discussed in col 7, lines 60+ and col 12 lines 50+. With regard to claim 18, note the detection function mentioned above. With regard to claim 19, see members 16 and 18 (relay station) in figure 1. With regard to claim 20, see the discussion of the notifying unit and number of channels above. With regard to claims 21 - 22, see the discussion of the detecting unit and number of channels above. With regard to claim 23, note the notifying and detecting units discussed above with respect to claim 1, and further note rate selection step 145 in figure 5c of which a unit within the multimedia communication terminal shown in figure 1 to perform this is inherent, image switch 151 discussed in col 7 lines 20+, and note that the audio encode can be set with 4 transfer rates, as discussed in col 6, lines 52+. With regard to claims 24 - 25, see the rejection of claims 2 - 3. With regard to claims 26 - 27, see the rejection of claims 4 - 5 above.

4. Applicants arguments are moot in view of the new grounds of rejection.
5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however,

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will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

***Contact Information***

6. Examiner Blount may be contacted at the Patent Office between the hours of 9:00 am to 5:30 P.M. Monday through Friday. His phone number is (703) 305-0319.

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5/29/03